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Note verbale dated 10 September 2018 from the Permanent Mission of Yemen to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council

The Permanent Mission of the Republic of Yemen to the United Nations Office and other international organizations in Geneva presents its compliments to the esteemed secretariat of the Human Rights Council, and has the honour to submit the comments of the Government of Yemen on the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Yemen (A/HRC/39/43) (see annex).

The Permanent Mission requests the esteemed secretariat to circulate the present note verbale and the comments of the Government of Yemen attached thereto* as a document of the thirty-ninth session of the Human Rights Council.

* Reproduced as received, in the languages of submission only.

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Annex to the note verbale dated 10 September 2018 from the Permanent Mission of Yemen to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council

Comments of the Government of the Republic of Yemen on the Report of the High Commissioner for Human Rights (the findings of the Group of Eminent International and Regional Experts on Yemen)

The Government of the Republic of Yemen thoroughly reviewed the Report of the High Commissioner for Human Rights (document No. A/HRC/39/43) issued on August 28, 2018 under the title "Situation of human rights in Yemen, including violations and abuses since September 2014" with the associated conclusions and recommendations produced by the Group of Eminent Experts on alleged violations of human rights in Yemen, in addition to the annexes enclosed with the report. The comments of the Government of Yemen are as follows:

General Comments:

(a) The Government of Yemen has spontaneously welcomed the Human Rights Council Resolution 36/31 upon its issuance and expressed its readiness to provide all possible cooperation to facilitate the task of the Group;

(b) The Government of the Republic of Yemen provided all possible facilities for the visits of the Group of Experts and the Secretariat to Yemen;

(c) The Group of Experts made only one short visit to Yemen for one week covering the provisional capital Aden (March 12–14, 2017) and Sana'a for three days;

(d) During the reporting period, the Secretariat of the Group of Eminent International and Regional Experts, made two working visits only to the Yemeni territories. These two visits were limited to Aden and Sana'a (the first visit was in April 2018 and the second in May 2018). The duration of each visit was just few days. As the report mentions, Hodeidah and Sadah provinces were also visited;

(e) The Group of Experts never visited the province of Taiz that saw, and still seeing, grave and serious human rights violations perpetrated by Houthi militias, despite the repeated invitations for it to do so. The justifications for the non-visiting of the province of Taiz are unfounded. Other liberated provinces such as Mareb, Al Jawf and Shabwa were not visited although it was possible for the Group to visit these provinces and examine violations committed by the Houthi Group there;

(f) The Government of the Republic of Yemen is surprised that the OHCHR did not send the draft report to the Government for its comments as the practice has been. The Group was appointed by the High Commissioner and the report was issued under the Commissioner's name;

(g) Based on the conclusions and findings contained in the report of the High Commissioner for Human Rights on the Situation of Human Rights in Yemen Including Violations and Abuses since September 2014, the Government of Yemen notes that the Group of Experts has gone beyond the authority and mandate granted to the Group in accordance with the HRC Resolution 36/31 as stated below:

(i) The conclusions produced by the Group of Eminent International and Regional Experts, as included in the report of the High Commissioner, have derailed from the standards of professionalism, integrity, impartiality and the principles provided for in various mechanisms of the United Nations. These conclusions have turned a blind eye to the serious crimes and violations committed by Houthi militias within the context of human rights and the International Humanitarian Law;

(ii) These conclusions almost entirely neglected many of the crimes and violations already included in earlier reports issued from the High Commissioner's Office; the reports of the Panel of Experts Established pursuant to Security Council resolution 2140 (2014); or even the reports of some international NGOs such as Human Rights Watch, Amnesty International, let alone reports of Yemeni human rights organizations and activists. The Group deliberately neglected the reports on human rights violations handed over to the Group by the Ministry of Human Rights during its visit to Aden.

(iii) The Group has clearly sidelined with the Houthi Militias by attempting to dilute the seriousness of crimes Houthis committed. This marks a true bias. Moreover, this encourages Houthi Militias to perpetrate even more violations to human rights and the International Humanitarian Law;

(iv) For the first time since September 2014, Houthi Militias welcome this report issued from a UN agency or an international organization, and this alone is enough to reflect the bias of the conclusions to favor the Houthis, which will encourage them to commit more criminal acts against the People of Yemen.

Introduction and Mandate

1. The report states that the mandate of the Group is to consider violations committed during the period from September 1, 2014 until June 30, 2018 while the Group only considered violations committed since Mars 2015 as detailed in the report with the report being limited to selected cases, in which the Arab Coalition and the Legitimate Government are accused. The report neglects crimes perpetrated by Houthi Militias since they seized state institutions on September 21, 2014 and the following invasion of different Yemeni cities.

2. Contrary to the national and international context, the Group of Experts used in its report the term "Pro-Government Forces". This term is not used in the Yemeni Armed Forces Law. The legal title in Yemeni Law is "the Armed Forces and Security". As for individuals affiliated with the People's Resistance in different provinces invaded by the Houthis, the vast majority of them are civilians that grouped to defend themselves and their areas.

3. The Group of Experts used the term the "de facto authorities" to describe Houthi Militias contrary to the definition and description of the international law of the de facto authorities and contrary as well to the description of the conflict parties contained in the UNSC Resolutions 2216 and 2140 and the reports of the Panel of Experts on Yemen Established pursuant to Security Council resolution 2140 (2014).

Methodology

4. Although the Government of Yemen granted the Group of Experts and the Secretariat staff multiple entry visas to the Republic of Yemen valid for six months in accordance with the memo of the OHCHR dated February 13, 2018, but the Group of Experts paid only one visit to Yemen in March 2018 (Sana'a, for 3 days and Aden for another 3 days), while the Secretariat visited Aden and Sana'a twice for 3 days in each visit. Hence, it is impossible to say that the team had the time to conduct thorough examination and scrutiny of the information related to alleged crimes, let alone the examination of evidences and the witness statements the Group claims to have conducted without referring to the methodology the Group followed. This is particularly true given the fact that the Group was formed in December 2017 and had about six months to work.

5. The Group of Experts did not visit the province of Mareb to examine crimes committed by the Houthis following the attack on Mareb in 2015. The report also talks about violations in the province of Hadramout, but the Group never visited Hadramout despite the calm situation in the province.

6. The report methodology does not mention the security and administrative restrictions that led to the team not visiting the conflict-affected provinces, especially Taiz. The report does not also mention the party that prevented this visit. In addition, the Group

of Experts did not elaborate on the alternative course of action it followed to compensate its inability of being present on the ground and whether this is sufficient, in its view, to establish a clear idea on various crimes and their respective perpetrators.

7. Paragraph 8 notes that the Group of Experts issued an online call for submissions. However, the call, nor the report, mentions the criteria for dealing with information received online from the public. This is particularly relevant as the conclusions indicate that a selective approach has been followed in choosing cases and violations alleged against one party.

8. On the inquiries presented to the Government, the Government of Yemen confirms that it provided the sought replies to the questions of the Group. These replies were communicated through the joint reply with the Coalition.

Legal Framework

9. Commenting on paragraph 13 under the legal framework purporting that "the Government retains positive obligations in areas where it has lost effective control." The government of Yemen confirms that it is committed to all international conventions and treaties Yemen is a party to, or international customary law. The Government of Yemen stresses that the international community should bear its responsibilities towards Yemen and provide assistance and support, so the Government can restore the rule of law and extend its authority to the entire territory of Yemen. The Government invites the international community, including the OHCHR and all UN Agencies, to work with it and cooperate to strengthen the operation of law enforcement institutions in order to achieve accountability and prevent impunity.

10. The Government of the Republic of Yemen refutes the claim of the Group of Experts, in paragraph 14, that Houthi Militias control large swathes of territories in Yemen. This is a deliberate misconception to mislead the public opinion and it is contrary to the reality on the ground, where the Government controls 83% of the Yemeni territories. The report describes Houthi Militias as "de facto authorities" exercising government-like functions, is something that contradicts with the international resolutions and the real practices on the ground. The Government of Yemen renews its rejection to using this term to describe a terrorist armed group not different, in its practices, from Al Qaeda and ISIS, which turned areas it controls into a large prison.

Context

11. The report deliberately describes what happened in September 2014 as a conflict on power-sharing arrangement and the draft constitution neglecting the real causes of the conflict and the roots of the problem represented in the armed aggression by Houthi Militias against state institutions and their rebellion against the outcomes of the National Dialogue Conference, the GCC Initiative and its Implementation Mechanism. By this, the Group of Experts is attempting to create a new context for the conflict that is contrary to international resolutions, namely the UNSC Resolutions 2216 of 2015 and 2140 of 2014 and the reports of the Panel of Experts on Yemen established Pursuant to Security Council Resolution 214 (S/2015/125, S/2016/73, S/2017/81 and S/2018/68), which defined the general context of events in Yemen.

12. Paragraph 17 of the context says that in 2014, the conflict escalated between government forces, the Houthis and other armed groups. The report does not identify these other armed groups. In fact, in 2014, there were no other armed groups with the exception of Houthi militias as corroborated by international literature, especially the relevant resolutions of the UN Security Council. Moreover, the report provides inaccurate information on the transfer of power to H.E. President Abdrabu Mansour Hadi, neglecting that he ascended to power following legitimate elections on February 21, 2012.

13. In paragraph 18 of the context, the report omits the political events that led to the current conflict in the period between September 1, 2014 until March 26, 2015. During that period, Houthis committed serious crimes, notably; putting the President of the Republic, the Prime Minister and members of the cabinet under house arrest; the crimes of killing, abduction, enforced disappearance; the invasion of cities; the ransacking of state

institutions; and attacking the President of the Republic in Aden after escaping from the grip of Houthi Militias. To the contrary of that, and in a biased and unneutral manner, in the context of narrating the events related to the intervention of the Arab Coalition, the report discusses one incident attributed to the Arab Coalition Forces (the Big Hall incident) although the context did not require such mention because it is discussed elsewhere in the incidents. However, the report should have at least mentioned the measures taken by the Legitimate Government and the Arab Coalition Forces following that incident rather than inserting this incident for the purpose of incitement and defamation of the Government of Yemen and the Legitimacy Support Coalition.

14. In paragraph 19, the report says that the Government of Yemen ceased paying public sector salaries without mentioning the reasons that led the Government to relocate the Central Bank to the provisional capital Aden due to Houthis draining the cash reserves of the Central Bank amounting to 4.7 billion US Dollars, 235 billion Yemeni Riyals in the balances of the Yemeni Petroleum Company, the balances of the Ministry of Agriculture from foreign grants, the balances of national corporations and 789 million US Dollars in the form of deposits for the Social Security Corporation. The decision to relocate the Central Bank to Aden in September 2016 followed the inability of the Central Bank of Sana'a to pay the salaries of public sector employees starting from August 2016. The report also omits mentioning that Houthi Militias refused to transfer tax revenues from areas they control to the Central Bank in Aden and their refusal of the proposals made by the previous UN Special Envoy on the mechanism of collecting revenues, payment of salaries and transfer of tax revenues in areas they control to the Central Bank, so the government can continue payment of salaries.

15. The Group of Experts says, in paragraph 20, that the front lines remained largely unmoved after three years of fighting in an overt misleading of the public opinion to present Houthi Militias as in control of the country. To the opposite, Yemeni Armed Forces, with support from the Coalition to restore legitimacy, recaptured the vast majority of Yemeni territories (83%) starting from Aden, all southern provinces and the west coast areas and are now positioned in the outskirts of the Capital Sana'a.

16. The report (paragraph 21) neglected the fact that Houthi Militias caused the expansion and proliferation of terrorist groups, Al Qaeda in particular, taking advantage of the collapse of the security and military apparatus of the state. The report also does not refer to the efforts made by the Government of Yemen and the Coalition to restore legitimacy in combating terrorism and terrorist organizations.

- Violations of International Law
- Attacks affecting civilians

17. The report (paragraphs 27) provides statistics on the number of civilian casualties since March 2015 in evidence that the Group of Experts is neglecting the crimes and abuses committed since 2014 on purpose although the time mandate of the Group starts from September 1, 2014. This is an evidence of the bias of the Group in selecting the timeframe and the incidents to target a certain party. In general, the total number of civilian victims has not been scrutinized by the Group but it rather re-published what has been already published by the OHCHR (see the statement of the OHCHR spokesperson Liz Throssell on August 10, 2018). This behaviour is inconsistent with the nature of the Group of Experts work as the Group is required to sanitize data and not just copy from other sources.

18. The Group of Experts claimed that it investigated 13 incidents of Coalition air strikes. On the other hand, the Group of Experts did not investigate any of the incidents blamed on Houthi Militias in an evidence of the lack of neutrality.

19. The Group of Experts claims that it reviewed 118 incidents attributed to the Coalition (paragraphs 29–34) as violations to the International Law. On the other side, the Group of Experts did not clearly review any of the incidents blamed on Houthis.

20. Whenever violations perpetrated by Houthi Militias are mentioned, the report describes them as violations by all parties to the conflict, as the case in paragraph 40 of the report. Alternatively, these violations are presented in an inconspicuous, undocumented and undated manner as the case in paragraphs 41 to 45.

21. The Government of Yemen refuses the description of Yemeni Armed Forces and its units in Taiz as "pro-Hadi forces, Salafist militias and Islah militias" (paragraph 41). The military units in Taiz are all under the command of the Yemeni army. The Government refuses blaming the responsibility of civilian casualties to the so called "fighting parties" and neglecting the grave violations and crimes perpetrated by Houthi Militias in Taiz for more than three years, some of which amount to war crimes and crimes against humanity.

Restrictions on humanitarian access

22. The Group of Experts largely holds the countries of the Legitimacy-Support Coalition in Yemen responsible for the restrictions on the delivery of humanitarian aid to Yemen although it is a fact that the Coalition countries provided substantial aid to the Yemeni people either at the bilateral level or through international organizations, King Salam Center or the UAE Red Crescent. On the other hand, the report turns a blind eye to the restrictions imposed by Houthi militias on humanitarian action in Yemen and the systemic violations against workers in the humanitarian realm including local and international staff working with international organizations. The reports of Panel of Experts on Yemen established pursuant to Security Council 2140 discussed barriers put by Houthi Militias against delivery of humanitarian aid to those in need, including the diversion of aid, the delay or refusal, the apprehension of relief workers and the interferences in the selection of beneficiaries and areas of operation of implementing partners. For example, the letter sent from the UN Staff Syndicate in Sana'a to the Assistant Secretary-General for Human Rights, Andrew Gilmour, on March 5, 2018 shows that international and local staff are subject to abductions, arrests and threats by Houthi militias to influence the UN operations in the country.

23. The report says that Yemen imports about 90% of foodstuff, medical supplies and fuel and that the so called "blockades" have had widespread and devastating effects on the civilian population, in particular in the areas controlled by the Houthis. This allegation is in contrast with the reality. Till September 2018, Yemen received more than 30 thousand shipments of relief aid through land, sea and air ports.

24. The report neglects to mention the newly introduced customs levies and charges imposed by Houthi militias through the creation of custom ports at entrances of cities. The mid-year report of the Panel of Experts on Yemen (paragraph 85) notes that Houthi Militias continue to charge double customs on goods at the customs point in Dhammar, leading to soaring prices of foodstuffs with negative impacts on citizens.

25. The report neglects the restrictions imposed by Houthis on delivery of humanitarian aid including the seizure and confiscation of aid convoys and medical shipments; the besiege and starvation of population; the obstruction of humanitarian operations and the attacks against humanitarian workers. Among these neglected violations committed by Houthi militias are Houthi targeting of seven commercial and relief vessels and the detention of 85 other vessels carrying commercial, relief and fuel materials in the ports of Hodeidah and Salif.

Arbitrary detentions, enforced disappearance, torture and ill-treatment

26. The Group of Experts states that the Group, or the Secretariat, paid visits to Aden, Sana'a, Sadah and Hodeidah. In its presentation about Aden, the Group of Experts focused on the so called "secret prisons", the detention, torture and rape of migrants but the Group deliberately omitted mentioning crimes committed by Houthis in Aden, and other provinces invaded by Houthi militias since March 2015. The report gave little attention to these crimes but accused the Government of Yemen and the Coalition of committing human rights violations in a flagrant bias that impairs the credibility of the report.

27. The report accuses Houthis of committing violations that amount to war crimes, notably the degrading and cruel treatment, torture and outrages upon personal dignity. However, the report neglected presenting documented cases with evidences and dates thus making these accusations weak and legally invalid. On the other hand, the Group of Experts paid no attention to the documented statistics presented by the National Commission of Inquiry and the Ministry of Human Rights confirming that the cases of arbitrary detention

and enforced disappearance on the hands of Houthi militias since September 2014 until February 2018 amounted to 17,800 cases. Some of these detainees were released against ransoms and their families were extorted. The majority of those released are suffering from permanent disabilities and psychological disorders because of the torture and cruel treatment they sustained during their detention. More than one thousand cases of torture have been documented, including 121 cases of torture-to-death, the latest of which was the case of the journalist Anwar Al Rokn.

Accountability

28. The Group of Experts went beyond its mandate when it evaluated the activity of the National Commission of Inquiry (paragraph 103) and described it as non-independent. Judging the National Commission of Inquiry should not be the responsibility of the Group of Experts. The National Commission is an independent national investigation mechanism.

Position of the Government of the Republic of Yemen

29. The Government of Yemen refuses the listing of the country's high-level leaders (paragraph 109 and annex 1) as "actors in the conflict". This includes listing the names of the President of Yemen, leaders and officials in UN member states. This action of the Group is unthought of and by no mean within the mandate of the OHCHR nor the mandate prescribed under the HRC Resolution 36/31. The Group of Experts is not an international commission of inquiry and has no power to list, as accused, the names of high-level leaders on the basis of mere perceptions. The Government rejects the dual standards and the selectivity in addressing human rights cases in certain countries within the Human Rights Council.

30. The Government of Yemen opposes the conclusion of the Group (paragraph 108) in its recommendations to create a special court or its request (paragraph 113) to the UN Security Council to emphasize the human rights dimensions of the conflict in Yemen in a blatant violation to the Human Rights Council resolution.

31. The Group of Experts disregarded the reports supplied by the National Commission of Inquiry and civil society organizations on Houthi crimes since September 2014. On the other side, information narrated in the Group of Experts report are identical to the story told in Houthi media and the publications of pro-Houthi NGOs. This is an evidence that the Group of Experts relied on reports it received from Houthi Group and its affiliated NGOs.

32. In a surprising behavior, the Group of Experts neglected serious and grave crimes committed solely by Houthi militias, notably; the bombing of the houses of opponents; the use of civilians as human shields; and the use of internationally-banned antipersonnel mines on roads, farms and houses. It is estimated that the randomly planted mines exceeded one million landmines claiming the lives of civilians, especially women and children, every day. The number of civilian victims of mines until June 2018 reached 3481 victims (including 1194 fatalities and 2287 injuries). These mines threaten the lives of generations to come. Since the beginning of this year, the National Mine Action Program removed more than 282,319 mines, explosive devices and war remnants.

33. The Government of the Republic of Yemen calls upon the Human Rights Council not to extend the mandate of the Group of Experts as it has become evident from its report that the Group politicizes the situation of human rights in Yemen to cover up the crime of an armed militia that waged a war and controlled state institution by force. The Group of Experts is demonstrably sided with militias to create a new context in contrast with UN SC resolutions on Yemen, including Resolution 2216.

34. The Government of Yemen stresses that the continued work of the Group of Experts will adversely impact the situation of human rights in Yemen, especially as the report of the Group encourages militias to commit more crimes and abuses against the people of Yemen and this will further reflect itself on the nature of relationship between the Government of the Republic of Yemen and the Office of the High Commissioner for Human Rights.

35. The Government of the Republic of Yemen invites the Human Rights Council to re-assess the situation of human rights in Yemen in a comprehensive and objective manner

through supporting the national mechanisms, namely; the Ministry of Human Rights and the National Commission to Investigate Alleged Violations to Human Rights.

36. The Government of the Republic of Yemen strongly deplores the departure and the violation of the report findings of all international references, including the UN Security Council resolutions 2216 of 2015 and 2140 of 2014, regarding the description and context of the conflict and events leading to it, especially the narration under paragraph 17 (d) describing the events and the attempts to mislead the international community by describing the declaration of war by Houthi militias and its allies then the war against the Yemeni state as a "power-sharing conflict". This invites the Government to question the causes and motives of such description that is exclusive for this report. UN reports, notably the reports of the UNSC Sanctions Committee Panel of Experts since 2015 until 2017, the reports and statements of the UN Security Council are free from such narration. For more information, please see the reports of the Panel of Experts on Yemen (S/2015/125, S/2016/73, S/2017/81 and S/2018/68).

37. The Government of the Republic of Yemen affirms that it is responsible for the application of all principles provided for in its national legislations and those laid down in international legislations, including the International Humanitarian Law and the International Human Rights Law, including the principles of accountability, justice and non-impunity.

38. Given the current situations in Yemen, the Government of Yemen requests the international community and UN agencies, including the Human Rights Council and the OHCHR, to provide support and assistance to fulfill the obligations of the international community as set forth in international conventions, resolutions and the international law.

39. The Government of Yemen renews its invitation to the Office of High Commissioner for Human Rights to support the Government of Yemen as provided for in the resolutions of the Human Rights Council since 2011 until 2017 to assist and build the capacity of the Government in protecting human rights in Yemen. The Government also invites OHCHR to adhere to the Host Country Agreement signed in 2013 and implement its provisions.